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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the	)	CC Docket No. 92-237
North American Numbering Plan	)	
Carrier Identification Codes ("CICs")	)	

REPLY TO COMMENTS IN OPPOSITION TO PETITION FOR RECONSIDERATION OF VARTEC TELECOM, INC.

Pursuant to Section 1.429(g) of the Commission's rules, 47 C.F.R.§1.429(g), VarTec Telecom, Inc. ("VarTec"), by and through its attorneys hereby replies to the comments of parties opposing the Petition for Reconsideration filed by VarTec in the above-captioned proceeding. For the reasons set forth herein, VarTec urges the Commission to reject the arguments of the parties opposing VarTec's Petition for Reconsideration, and to reconsider and vacate the Order eliminating five digit Carrier Access Codes ("CACs") adopted in the above-captioned proceeding.

In the Second Report and Order released by the Commission in the above-captioned proceeding,[1] the Commission adopted a plan eliminating all five digit CACs in favor of seven digit CACs. The Order mandates use of seven digit CACs after January 1, 1998, does not provide for grandfathering the use of any five digit CACs, and does not require LECs to provide an intercept message informing consumers of the new CAC when they dial the old CAC.

In its Petition for Reconsideration, VarTec proposed that since LECs are technologically capable of recognizing both five and seven digit CACs [2], seven digit codes should supplement, rather

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1 Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Second Report and Order, FCC 97-125 (rel. April 11, 1997) (hereinafter referred to as the "Order").

2 See also Exhibit 1(Declaration of Marion R. Bowman).

than replace five digit codes.[3] In its comments opposing VarTec's Petition for Reconsideration, US West, Inc. ("US West") claims that grandfathering three digit Carrier Identification Codes ("CICs") will preclude future use of five digit CICs and the third digit for expansion purposes.[4] VarTec points out that under its grandfathering plan, the number of available CACs would rise from 970 to 10,900, a more than tenfold increase. Thus it seems unlikely that a transition to five digit CICs will ever become necessary. If, however, the Commission did decide to assign five digit CICs, the plan proposed by VarTec which allows for contemporaneous use of three and four digit CICs could easily be modified to allow for further expansion.

Under VarTec's proposed grandfathering plan, all three digit CICs starting with "1" would be removed from use so that a switch would not confuse 101XX with 101XXXX. Similarly, if further expansion became necessary, three digit CICs starting with the number "2" could be removed from use. That would allow use of the number "2" to signal that a five digit CIC is about to be dialed (i.e., 102XXXXX).[5] Under this simple adaptation of the VarTec grandfathering plan, an additional

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[3] See also Exhibit 1(Declaration of Marion R. Bowman).

[4] Opposition of US West, Inc. at 7-8.

[5] The third and fourth digits in a CAC sequence are currently used to signal whether a 5-digit or 7-digit CAC format is being used by the caller. See Expansion of Carrier Identification Code Capacity for Feature Group D (Feature Group D), Bellcore Technical Reference TR-NWT-001050, Issue 1, April 1991 at Section 3.1.1, p. 3-1. Use of the third digit to signal use of a 5-digit CIC would therefore be consistent with current practice. The same would be true under US West's scenario for expansion, where the use of number "2" would signal a 5-digit CIC.

100,000 CICs would become available, which should alleviate US West's concerns regarding future needs.

Sprint Communications Company, L.P. ("Sprint") and AT&T Corp. ("AT&T") both assert that competitive disadvantages associated with the two-digit dialing disparity militate against allowing simultaneous use of five and seven digit CACs. In fact, coexistence of five and seven digit CACs would have no negative effect upon competition, but would instead increase competition. Elimination of five digit CACs, on the other hand, will significantly harm those competitors who presently hold five digit CACs and will decrease overall competition because many confused consumers currently using five digit CACs will revert to their former practice of using their primary interexchange carrier ("PIC") when they fail to get their calls through using the five digit CAC after January 1, 1998.

There can be no better validation of this concern regarding the negative effect on competition than the fact that AT&T and Sprint have decided to come to the "rescue" of future dial-around providers who will use seven digit CACs, by arguing in favor of abolition of the five digit CACs. Dial-around providers such as VarTec have provided the first serious competition that the "big three" have seen, driving down the cost of long distance service for consumers. AT&T and Sprint know that they will be the primary beneficiaries if the Commission rejects VarTec's proposal to grandfather five digit CACs. They obviously recognize that competition outside the AT&T/Sprint/MCI oligopoly would decrease considerably as confused consumers turn away from the dial-around services they currently use and "default" to their PICs. Many will do so simply because they will not know how to switch to the new seven digit CACs of their current providers, and others will resent the added complication of memorizing additional digits for a provider they are

already comfortably using. It would be folly to believe that AT&T and Sprint are advocating the end of five digit CACs because they are truly concerned about ensuring that future providers of seven digit CAC dial around service be given better access to the competitive arena. VarTec respectfully submits that the Commission has focused entirely on what it perceives would be competitive disadvantages between five and seven digit CAC dial-around providers, without fully considering the effect that its proposed action will have on overall competition between the "big three" and other providers. The bottom line is that consumers will not benefit from the Commission's action if it has the effect of making it more difficult for consumers to use alternative services to those provided by AT&T, Sprint and MCI. That is precisely what will happen if five-digit CACs are eliminated, instead of supplemented with seven-digit CACs.

Sprint misinterprets statements made in VarTec's Petition for Reconsideration regarding the cumbersome nature of seven digit CACs[6] in order to bolster its claim that the elimination of five digit CACs will promote competition. In its Petition for Reconsideration, VarTec distinguishes between customers deciding to use a CAC for the first time, and customers who have become accustomed to using five digit CACs. For customers deciding to use a CAC for the first time, the difference in convenience between five and seven digit CACs is not likely to be as important a factor in deciding which CAC to use. This is because the ultimate concern of a CAC user is not convenience; if these customers were primarily concerned with convenience, they would use their PIC. Customers who choose to use CACs do so because they place greater importance on factors other than convenience, such as cost or service quality. These customers are prepared to sacrifice

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[6] Sprint Comments at 3.

the convenience of using their PICs in order to gain some other advantage, such as lower price or higher service quality. Having made the decision to forgo the convenience of the PIC in favor of the lower cost or higher service quality of the dial-around carrier, it seems less likely that first-time CAC customers would be overly concerned with whether the service they have decided to use is accessed through a five or seven digit CAC. Thus, coexistence between five and seven digit CACs will not place an unfair burden on seven digit CAC providers.

For customers already accustomed to using VarTec's five digit CACs, however, the analysis is far different. These customers no longer face the decision of which dial-around carrier's service to use; they have utilized VarTec as their service provider, have become familiar with VarTec's CAC and have developed a reasonable expectation that when they dial VarTec's CAC, they will receive the service and rates they desire. After January 1, 1998, when these customers attempt to use the five digit CACs they are accustomed to using, they are likely to become frustrated and confused. Some may recall receiving information about a change in the CAC, but many will conclude that VarTec's service is unreliable and opt to use the PIC instead.[7] Unscrupulous competitors may take advantage of customers' confusion and make misleading claims about the quality of VarTec's services in an attempt to lure customers away from VarTec. Even those customers who are aware that the CAC has changed may choose to use the PIC, rather than bother with figuring out the new code. Imposition of artificial barriers to use of VarTec's service, which will lead customers to

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[7] Successful consumer education requires that consumers hear a particular message on a repeated basis. The information must be delivered frequently both in writing and orally. Thus, even after months of reminders, consumers are likely to attempt to use the old CACs unless they are prompted to use the new CAC at the time of placement of the call. See MCI Comments at 4-5.

believe that they have no choice but to use another service, does not equate to promotion of competition.

Sprint suggests that VarTec has the ability to compete for 1+ traffic, and therefore that it will not be harmed by the elimination of five digit CACs.[8] This unreasonable assertion misses the point; VarTec has already faced and overcome the challenge of being a new market entrant; it has spent the past seven years building a customer base that habitually uses its five digit CACs to access long-distance service. It currently provides dial-around long distance services to more than 3 million customers in 48 states and the District of Columbia. Dial-around callers account for more than 90 percent of VarTec's customer base and associated revenues. Contrary to Sprint's assertion, VarTec cannot simply switch to providing 1+ service and maintain its current customer base; in order to compete in the PIC market, VarTec would be forced to start from scratch and rebuild its business. Moreover, as explained above, customer confusion and frustration resulting from the inability to use VarTec's five digit CACs is likely to erode much of VarTec's existing goodwill and customer base. This highlights the anti-competitive and unfair nature of the Order eliminating five digit CACs. Far from promoting the Commission's goal of ensuring competition in long distance,[9] the Order will have the effect of removing VarTec and other five digit CAC holders as competitors.

Sprint further implies that VarTec could avoid the negative impact of the elimination of five digit CACs by simply reeducating its customers to dial seven digit CACs. As explained above, however, customer reeducation material is not likely to prevent the customer confusion and

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[8] Sprint Comments at 4.

[9] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, par. 3 (rel. August 8, 1996).

frustration which will result when customers are unable to use VarTec's CACs to access long distance services. Moreover, the enormous effort which would be required in order to reeducate every single existing and potential customer of VarTec is tantamount to the effort necessary to launch a business as a new competitor. As pointed out above, VarTec has already faced the challenge of being a new market entrant. Thus, unlike its PIC and seven digit CAC holder competitors, VarTec is essentially being required to go through the start-up process twice. Far from promoting competition, elimination of five digit CACs will impede competition by removing viable competitors from the long distance market. Rather than promoting competition between the PIC and the five digit CAC holders, the Order penalizes VarTec by stripping it of the five digit CACs which form the basis of its business, and unnecessarily depriving it of the benefit of the significant time and effort it has devoted to building its business.

Similarly, US West asserts that VarTec should have been aware that it would eventually be required to replace its three digit CICs with four digit CICs, and therefore that it should have notified its customers of the impending change. US West's claim assumes, incorrectly, that VarTec customers would have been able to access its services using a four digit CIC. Although the Commission began assigning certain four digit CICs in 1995, not all LEC switches were technically capable of handling four digit CICs at that time.[10] Thus, in order to guarantee its customers access to the long distance services it offers, VarTec has continued to promote customers' use of three digit CICs which are universally accepted by LEC switches. By continuing to promote use of three digit CICs, VarTec prevented the customer confusion and frustration which would have resulted when

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[10] Petition for Reconsideration of Competitive Telecommunications Association ("CompTel Petition") at 6.

LECs which did not have the technical capability to route four digit CICs sent an error message to customers attempting to use VarTec's four digit CIC. It is unreasonable to expect that VarTec would have expended resources promoting the use of four digit CICs which had the potential to interfere with customers' ability to access long distances services. This is particularly true where use of four digit CICs was not mandatory and where the Commission proposed a six year transition schedule in the NPRM.

Even today, it is unclear whether the national network is prepared for the conversion to four digit CICs. As the Competitive Telecommunications Association ("CompTel") pointed out in its Petition for Reconsideration in this proceeding, "[n]umerous ILECs, especially small ILECs in rural or suburban areas, have not reprogrammed or upgraded their equipment in order to accept seven digit CACs."[11] WorldCom, Inc. ("WorldCom") echoes CompTel's observations, reporting that many LECs in both rural and non-rural areas do not have the capability to accept four digit CICs.[12] The record does not establish that VarTec's customers will be able to access long distances services using four digit CICs; in fact, there exists clear evidence in the record controverting the assumption that every single switch in the national network will be prepared to handle four digit CICs on January 1, 1998.[13]

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11 Id.

12 WorldCom comments at 5-6.

13 See, CompTel Petition for Reconsideration and Comments of OPASTCO, WorldCom, Cable & Wireless and Telecommunications Resellers Association.

Finally, Sprint challenges the argument that elimination of VarTec's five digit CACs constitutes an unconstitutional taking of VarTec's property.[14] Sprint claims that NANP codes are a public resource and are therefore not protected under the Fifth Amendment.[15] As authority for this proposition, Sprint relies on a Commission order and industry guidelines. Sprint does not, however, cite any statutory authority to support this assertion. Congress has never nationalized telephone numbers as public property. The Communications Act does not authorize the FCC to effect such a taking. Only Congress can authorize the taking of private property, such as VarTec's five digit CACs, and to abide by the Constitution, it also must provide just compensation. VarTec submits that, contrary to Sprint's assertion, CACs are analogous to western water rights which belong to no one, but may be acquired by reason of investment of time and money in application of the resource to productive use. VarTec has invested a substantial amount of time and money in marketing its five digit CACs. Through these efforts, VarTec acquired a property interest in its CACs and the right to their continued use; a right which is protected by the Fifth Amendment of the U.S. Constitution and which may not be taken without due process and just compensation.

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14 Sprint Comment at 4.

15 Id.

VII. CONCLUSION

For all the foregoing reasons, VarTec urges the Commission to reconsider its Second Report and Order and allow VarTec to continue to use its five digit CACs to provide long distance service to its customers.

Respectfully submitted,

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June 30, 1997

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EXHIBIT ONE

ORIGINAL

DECLARATION OF MARION R. BOWMAN

I, Marion R. Bowman, declare that the following is true and correct:

1. I am the President of and in charge of all engineering for Joseph D. Fail Engineering Co., Inc. I received my Bachelor of Science Degree in Engineering (Electrical) from The University of Tennessee and am currently a licensed engineer (PE) in many states. My telecommunications career includes over forty years of service with Cottrell & House, Inc. & Joseph D. Fail Engineering Co., Inc. My duties have included acting as design engineer, chief engineer & engineering in charge of all engineering activities for the telecommunications industry.

2. Carrier Identification Codes ("CICs") are numeric codes that enable local exchange carriers ("LECs"), as providers of interexchange access services, to identify long distance telephone companies in order to bill and route traffic to such carriers. Access providers are typically LEC's that provide long distance telephone companies with circuits that interconnect to the local carrier's public switched telephone network. FCC rules require that interstate access services should be made available on a non-discriminatory basis. Typical access customers include not only long distance telephone companies but also wireless carriers, competitive access providers, and large corporate users.

3. CICs facilitate competition by enabling callers to use the services of any number of telecommunications service providers. For example, they enable a caller to presubscribe to the local or long-distance carrier of his choice. In addition, a carrier's CIC, which is the suffix of that carrier's Carrier Access Code ("CAC"), enables callers to reach any carrier (presubscribed or otherwise) from any telephone.

4. From any telephone, a caller may dial a five digit CAC ("10XXX") to reach a carrier, with the last three digits ("XXX") representing that carrier's unique three digit Feature Group D CIC. For example, VarTec has "811" as a three digit CIC. The FCC wants to make all CICs four digits beginning January 1, 1998.

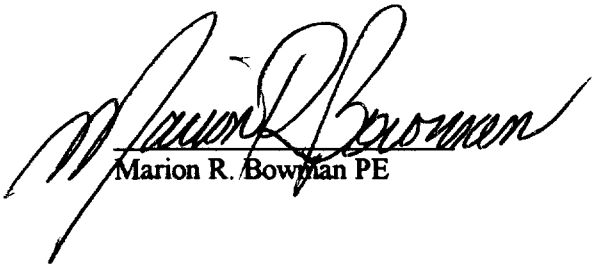
5. Until January 1, 1998, callers may dial either a three digit CIC or a four digit CIC to reach carriers. After January 1, 1998, callers can reach a carrier only by dialing its seven digit CAC in which a four digit CIC is embedded.

6. I am familiar with the grandfathering plan set forth in VarTec Telecom, Inc.'s Petition for Reconsideration filed May 19, 1997 that allows for the coexistence of existing Feature Group D 10XXX CACs with newly assigned 101XXXX CACs. The grandfathering plan is easily carried out and provides more CICs than the FCC's CICs expansion plan without requiring most carriers to relinquish their existing three digit CICs. Based on my knowledge of and experience with telecommunications switches and related software, I have determined that software and switch reprogramming that currently permit a switch to read both a 10636, which is one of VarTec's CACs, and 1016XXX, will allow the implementation of the grandfathering proposal set forth in VarTec's Petition for Reconsideration. To comply with the FCC's mandate, all switches should be able to read a seven digit CAC by January 1, 1998. Under VarTec's grandfathering plan, all three digit CICs starting with "1" would be taken out of use so that a switch does not confuse 101XX with 101XXXX. Then, a switch capable of translating a seven-digit CAC will continue to be able to properly route the following CACs: 100XX, 102XX, 103XX, 104XX, 105XX, 106XX, 107XX, 108XX, 109XX, 1010XXX, 1011XXX, 1012XXX, 1013XXX, 1014XXX, 1015XXX, 1016XXX, 1017XXX, 1018XXX, and 1019XXX.

7. This plan would require the reassignment of three digit CICs that have "1" as the first digit. However, only 70 such CICs have been assigned, making reassignment relatively easy. By allowing the use of other five digit and seven digit CACs, the FCC would in the long run, make 900 more CACs available for use than under its expansion plan.

8. Based on my experience, and an examination of VarTec's grandfathering proposal, I conclude that this proposal is technically feasible.

9. I declare to the best of my knowledge that the foregoing is true and correct.



Marion R. Bowman PE

Executed this 4th day of June, 1997.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were mailed this 30th day of June, 1997, by first-class mail, postage prepaid to the following:

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